

San Luis Obispo Coastkeeper, a program of  
Environment in the Public Interest  
1013 Monterey Street, Suite 202  
San Luis Obispo, California 93401  
Telephone (805) 781-9932  
Fax (805) 781-9384  
G.R.Hensley@sbcglobal.net



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Elizabeth Miller Jennings, Sr. Staff Counsel  
State Water Resources Control Board  
Office of Chief Counsel  
P.O. Box 100  
Sacramento, CA 95812-0100  
E-mail: bjennings@waterboards.ca.gov

**RE: Petition for Review of Waste Discharge Requirements (NPDES No. CA0047856) for the California Department of Corrections and Rehabilitation California Men's Colony Wastewater Treatment Plant, Issued by Regional Board Order No. R3-2006-0032**

Dear Ms. Jennings and State Water Resources Control Board:

San Luis Obispo Coastkeeper (hereinafter "Coastkeeper") hereby petitions the State Water Resources Control Board ("State Board") for review of the National Pollutant Discharge Elimination System ("NPDES") Permit No. CA0047856 ("the Permit") issued on July 7, 2006 by the California Regional Water Quality Control Board, Central Coast Region ("Regional Board"), by Order No. R3-2006-0032, for discharges of pollutants to waters of the United States from the California Men's Colony Wastewater Treatment Plant ("the WWTP"). A copy of Order No. R3-2006-0032 is attached hereto as Exhibit A.

As issued by the Regional Board, the Permit conflicts with the Clean Water Act ("CWA")'s fundamental requirement that NPDES permits include effluent limitations sufficiently stringent to ensure the attainment of CWA water quality standards ("WQS"). WQS are meant to protect the water quality needed for our State's waters to be usable for fishing, swimming, drinking and irrigation water supply, wildlife habitat, and the various other beneficial uses of such waters. Thus, permit limits that ensure attainment of WQS are key to the CWA's scheme of ensuring that the beneficial uses of the public's waters are protected. Rather than set effluent limitations necessary to ensure attainment of WQS, the Permit sets limits on the discharge of chlorodibromomethane, dichlorobromomethane, and copper that substantially

exceed appropriate WQS-based limits. The Permit decision in essence concludes that discharging waste at levels expected to interfere with the beneficial uses of a waterway complies with the CWA, in contradiction of the statute's declared purpose "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a). Respecting both these goals and the letter of CWA law requires the State Board to reverse the Regional Board's Permit decision with instructions to include in the Permit immediately effective appropriate WQS-based effluent limitations ("WQBELs").

Coastkeeper raised and presented all the issues addressed in this Petition to the Regional Board in a July 5, 2006 public comment letter duly submitted to the Regional Board during the applicable public comment period on the Permit and in live oral testimony at the July 7, 2006 public hearing before the Regional Board on the Permit. The comment letter is attached to the Petition as Exhibit B. Coastkeeper has sent copies of this Petition to the Regional Board and to the discharger.

## ***I. Factual Background***

### ***A. Coastkeeper***

Coastkeeper is a regional non-profit public benefit corporation organized under the laws of the State of California. Coastkeeper's mission is to protect and enhance the water quality of the waters of the Central Coast for the benefit of their ecosystems and human communities. Coastkeeper strives to protect thousands of miles of waterways throughout the Central Coast, investigating pollution problems and bringing enforcement actions against polluters directly when necessary.

Using targeted administrative and legal advocacy before the State and regional regulators, Coastkeeper plays a lead role in developing sound and legal standards, permits, and regulations. A key area of the group's focus is ensuring that State and Federal environmental laws are implemented properly and enforced. Where necessary, Coastkeeper initiates enforcement actions on behalf of its members and itself.

Coastkeeper and its members and the general public are adversely impacted by the discharge of pollutants from the WWTP, which threatens serious adverse impact on Chorro Creek. Coastkeeper and its members and the general public are aggrieved by the Regional Board's Permit decision because the Permit renders the excessive discharges of pollutants from the WWTP lawful under the CWA, thus beyond the public's ability to seek remedy for these discharges under the enforcement provisions of the CWA (which include action by the United

States Environmental Protection Agency (“EPA”), the Federal agency primarily responsible for protection the nation’s waters, and/or by citizens).

Coastkeeper's main office is located at 1013 Monterey Street, Suite 202, San Luis Obispo, California 93401 and may be reached via telephone at (805) 781-9932, Fax at (805) 781- 9384 or electronic mail at G.R.Hensley@sbcglobal.net.

Coastkeeper’s counsel’s contact information is as follows: Christopher Sproul, Environmental Advocates, 5135 Anza Street, San Francisco, California 94121, Telephone: (415) 533-3376, Fax: (415) 358-5695, E-Mail: csproul@enviroadvocates.com and Daniel Cooper, Lawyers for Clean Water, Inc., 1004 O’Reilly Avenue, San Francisco, California 94129, Telephone: (415) 440-6520, Fax: (415) 440-4155, Email: cleanwater@sfo.com.

#### **B. *The WWTP***

The WWTP, located on the grounds of Camp San Luis Obispo, a National Guard training site, is currently owned and operated by the California Department of Corrections (“Dept. of Corrections”). The WWTP accepts and treats domestic sanitary sewage from the California Army National Guard’s Camp San Luis Obispo, Cuesta College, and several San Luis Obispo County facilities. The WWTP discharges up to 1.2 million gallons of treated sewage to Chorro Creek.

#### **C. *The Permit Sets Impermissibly Lax Permit Limits***

40 C.F.R. section 122.44(d) requires that NPDES permits include WQBELs to attain and maintain applicable numeric and narrative water quality criteria in WQS to protect the beneficial uses of the receiving water. The Permit sets impermissibly lax permit limits substantially more lenient than appropriately set WQBELs designed to achieve WQS. Applicable California WQS for the Chorro Creek watershed are set forth in two federal regulations promulgated by the EPA known as the National Toxics Rule (“NTR”) and the California Toxics Rule (“CTR”) and the Regional Board-adopted *Water Quality Control Plan for the Central Coast Region* (“Basin Plan”). See 65 Fed. Reg. 31682, 31684-87 (May 18, 2000). The CTR and NTR are set forth at 40 C.F.R. section 131.38 and are explained in the Federal Register preamble accompanying promulgation of the CTR (set forth at 65 Fed. Reg. 31682).

Applying the CTR and NTR, the appropriate, immediately effective WQBELs for the WWTP discharge of chlorodibromomethane, dichlorobromomethane, and copper would be substantially more stringent than the limits for these pollutants actually set by the Permit. The

appropriate WQBEL for chlorodibromomethane would be an average monthly concentration of 0.4 ug/L and a maximum daily concentration of 0.81 ug/L. The Permit, however, sets no immediately effective daily maximum discharge limit at all for chlorodibromomethane and an average monthly concentration limit of 3.5 ug/L, nine times more lenient than the appropriate WQBEL. The appropriate WQBEL for dichlorobromomethane would be an average monthly concentration of 0.56 ug/L and a maximum daily concentration of 1.1 ug/L. The Permit, however, sets no immediately effective daily maximum discharge limit at all for dichlorobromomethane and an average monthly concentration limit of 13 ug/L, twelve times more lenient than the appropriate WQBEL. The appropriate WQBEL for copper would be an average monthly concentration of 8.5 ug/L and a maximum daily concentration of 17 ug/L. The Permit, however, sets no immediately effective daily maximum discharge limit at all for copper and an average monthly concentration limit of 12 ug/L, nearly 50% more lenient than the appropriate WQBEL.

Chlorodibromomethane, dichlorobromomethane, and copper are all well known to be highly toxic, environmentally-persistent substances and allowing elevated discharges of these pollutants to Chorro Creek endangers the ecosystem of this creek.

***II. Argument: The Proposed Compliance Schedule and Interim Effluent Limits Illegally Delay Achievement of Water Quality Standards.***

The Clean Water Act mandates that:

there shall be achieved . . . not later than July 1, 1977, any more stringent limitations, including those necessary to meet water quality standards, treatment standards, or schedules of compliance, established pursuant to any State law or regulations . . . or any other Federal law or regulation, or required to implement any applicable water quality standard established pursuant to this chapter.

CWA § 301(b)(1)(C), 33 U.S.C. § 1311(b)(1)(C). Despite this unambiguous, 29-year-old statutory deadline for achieving WQBELs, the Permit omits water quality-based effluent limits on these parameters and instead imposes a compliance schedule and interim permit limits far more lenient than WQBELs. In so doing, the permit gives Dept. of Corrections an extension for meeting WQBELs that extends far beyond the statutory deadline in CWA section 301(b)(1)(C) for achieving WQBELs. 33 U.S.C. § 1311(b)(1)(C). This approach is blatantly illegal and, if upheld, would directly undermine the WQS that are the heart of the Clean Water Act.

**A. *Regional Board Authority To Issue Compliance Schedules under the CTR Has Now Lapsed.***

40 C.F.R. section 131.38(e)(3) formerly authorized compliance schedules delaying the effective date of WQBELs being set based on the NTR and CTR. Pursuant to 40 C.F.R. section 131.38(e)(8), however, this compliance schedule authorization *expressly expired* on May 18, 2005, depriving all Regional Boards and the State Board with any authority to issue compliance schedules delaying the effective date of such WQBELs. Indeed, the EPA Federal Register Preamble accompanying the CTR stated as much, noting, “EPA has chosen to promulgate the rule with a sunset provision which states that the authorizing compliance schedule provision will cease or sunset on May 18, 2005.”

The Regional Board may contend that the EPA Federal Register Preamble has effectively extended this compliance schedule authority when the Preamble observed, “[I]f the State Board adopts, and EPA approves, a statewide authorizing compliance schedule provision significantly prior to May 18, 2005, EPA will act to stay the authorizing compliance schedule provision in today’s rule.” It is true that the State Board subsequently adopted its Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California, enacted by State Board Resolution No. 2000-015 (March 2, 2000) (“State Implementation Plan” or “SIP”) and that the SIP provides for compliance schedules without imposing a May 18, 2005 cutoff. EPA, however, *has not* acted to stay 40 C.F.R. section 131.38(e)(8) by the only means it can lawfully do so: notice and comment rulemaking that amends 40 C.F.R. section 131.38(e)(8). Without such a rulemaking, 40 C.F.R. section 131.38(e)(8) remains the law and it unequivocally ends authorization to issue compliance schedules for CTR and NTR-based effluent limitations after May 18, 2000. *See Friends of the Earth, Inc. v. Environmental Protection Agency*, 446 F.3d 140 (D.C. Cir. 2006).

Absent a compliance schedule, the NTR and CTR would mandate WQBELs for the discharge of chlorodibromomethane, dichlorobromomethane, and copper from the WWTP. *See* the Permit, paragraphs II.G, II.K., IV.A.1. Pursuant to 40 C.F.R. section 131.38(e)(8), the State Board must direct the Regional Board to issue immediately effective WQBELs for all of these pollutants for the WWTP set in accord with the NTR and CTR.

**B. *Interim Effluent Limitations Must Set Annual Milestones Toward Compliance***

Assuming *arguendo* that compliance schedules may still be issued for CTR-based effluent limitations, the Permit is still unlawful in failing to set CTR-mandated milestones for interim compliance measures.

The CTR provides:

If the schedule of compliance exceeds one year from the date of permit issuance, reissuance or modification, the schedule shall set forth interim requirements and dates for their achievement. The dates of completion between each requirement may not exceed one year. If the time necessary for completion of any requirement is more than one year and is not readily divisible into stages for completion, the permit shall require, at a minimum, specified dates for annual submission of progress reports on the status of interim requirements.

40 C.F.R. § 131.38(e)(5).

Thus, interim effluent limitations based upon the CTR-listed toxic pollutants must require a reduction of discharges gradually over time. There must be several stages of compliance, with increasingly stricter discharge limits, and dates of achievement for the discharge limits at each stage. Each stage may be no longer than one year.

The proposed interim effluent limitations in the Permit contain only one stage of compliance. Section IV.A.2. of the Permit limits the discharge of chlorodibromomethane to 3.5 ug/L, dichlorobromomethane to 13 ug/L, and copper to 12 ug/L until the final effluent limitations in the permit become effective on May 18, 2010. Thus, there is only one stage of compliance for nearly four years of coverage under the permit. This is inconsistent with 40 C.F.R. § 131.38(e)(5), which requires several stages of compliance, and dates for the achievement of each stage, which may be no longer than one year apart.

### III. ***Conclusion***

The Regional Board acted unlawfully in failing to include immediately effective WQBELs in the WWTP Permit. The State Board should reverse the Regional Board's Permit decision and remand the Permit to the Regional Board with instructions to include appropriate WQBELs. Alternatively, the State Board should direct the Regional Board to include appropriate interim compliance milestones in the Permit.

Coastkeeper, however, requests that the State Board hold in abeyance further action on this Petition for up to two years or further notice by Coastkeeper, whichever comes first. Coastkeeper, along with other environmental groups, anticipate filing one or more additional petitions for review challenging NPDES permit decisions by the Regional Boards issuing

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compliance schedules that delay the effective date of WQBELs in the coming months. For economy of the State Board and all parties, Coastkeeper and these other environmental groups will request the State Board to consolidate these petitions and/or to resolve the common issues presented by these petitions by action on a subset of the petitions. Accordingly, Coastkeeper urges that holding this petition in abeyance for now is a sensible approach.

Respectfully submitted,

Dated: August 4, 2006

By:

*Christopher A. Sproul*

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Christopher Sproul  
Counsel for Coastkeeper

cc:

Roger W. Briggs, Executive Officer  
California Regional Water Quality Control Board  
Central Coast Region  
895 Aerovista Place, Suite 101  
San Luis Obispo, California 93401-7906  
FAX: (805) 543-0397

M.A. Vela  
California Men's Colony  
P.O. Box 8101  
San Luis Obispo, California 93409